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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 MICHAEL AARON KAMBERGER,

9 Plaintiff,

10 v.

11 WASHINGTON STATE DEPARTMENT
12 OF CORRECTIONS, et al.,

13 Defendants.

Case No. C11-5967BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

14 This matter comes before the Court on the Report and Recommendation (“R&R”) of
15 the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 14), Plaintiff
16 Michael Aaron Kamburger’s (“Kamburger”) objections to the R&R (Dkt. 15), and
17 Kamburger’s motion for reconsideration (Dkt. 16).


18 On January 9, 2012, Judge Creatura issued the R&R recommending that the Court
19 dismiss Kamburger’s complaint without prejudice because Kamburger’s right to relief
20 depends on the outcome of his petition for writ of habeas corpus. Dkt. 14. Kamburger’s
21 cause of action arises from his attempt to resolve pending charges in Mason County Superior
22 Court for the State of Washington while being incarcerated for other convictions. The
23 charges were not resolved and Kamburger was subsequently convicted. Kamburger alleges
24 that the prison officials failed to properly mail his request to resolve the charges to both the
25 Mason County court and Mason County prosecutor. Kamburger claims that the officials’
26 alleged failures violated his due process rights and right to speedy trial.

1 Judge Creatura found that these allegations are the substance of Kamberger's pending
2 petition for writ of habeas corpus. Kamberger objects and requests leave to amend his
3 complaint to more accurately separate this civil rights action from his petition. Dkts. 15 &
4 16. The Court finds that the actions cannot be separated. If the civil rights challenge
5 "necessarily impl[ies] the invalidity of the judgment or continuing confinement, then the
6 challenge must be brought as a petition for a writ of habeas corpus, not under § 1983."
7 *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997) (quoting *Edwards v. Balisok*, 520
8 U.S. 641 (1997)). Kamberger is alleging a violation of his due process rights and right to a
9 speedy trial, which necessarily implies the validity of conviction and continuing
10 confinement.

11 Therefore, the Court having considered the R&R, Kamberger's objections and motion
12 for reconsideration, and the remaining record, does hereby find and order as follows:

- 13 (1) The R&R is **ADOPTED**;
- 14 (2) Kamberger's motion for reconsideration is **DENIED**; and
- 15 (3) This action is **DISMISSED without prejudice**.

16 DATED this 15th day of February, 2011

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19 BENJAMIN H. SETTLE
20 United States District Judge
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